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Attorneys for United States Trustee

Tracy Hope Davis

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	)	Case no: BK-N-15-50292-btb
	)	Chapter: 11
MARGARET LESLIE CANTLON,	)	
a/k/a Cindy Cantlon, Mrs. William	)	US TRUSTEE'S MOTION TO
McKean Cantlon,	)	DISMISS CASE
	)	
	)	Hearing Date: September 5, 2017
Debtors.	)	Hearing Time: 2:00p.m.
	)	Est. Time Req.: 15 min.

Tracy Hope Davis, the United States Trustee ("US Trustee"), by and through her undersigned attorney, hereby submits her Motion To Dismiss Case ("Motion"), based upon the Debtor's failures to comply with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice, and the United States Trustee Program Guidelines.

This Motion is made pursuant to 11 U.S.C. Section 1112(b), and is based upon the Debtor's:

1 1. Substantial or continuing loss to or diminution of the estate and the absence of a  
2 reasonable likelihood of rehabilitation; and

3 2. Failure to file plan status reports pursuant to LR 3016.

4 This Motion is based upon the following points and authorities, together with the entire  
5 record in this case, of which the US Trustee respectfully requests the Court take judicial notice,  
6 and such evidence as may be introduced at the hearing on this Motion.  
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8 **POINTS AND AUTHORITIES**

9 Pursuant to 28 U.S.C. § 586(a)(3), the US Trustee is charged with the responsibility for  
10 supervising the administration of cases and trustees in cases under chapters 7, 11, 12 and 13 of  
11 Title 11. To enable the US Trustee to carry out that duty, Congress has granted the US Trustee  
12 standing to raise and to "appear and be heard on any issue in any case or proceeding" brought  
13 under the Bankruptcy Code. 11 U.S.C. § 307. "In any case in which the United States trustee  
14 finds material grounds for any relief under section 1112 of title 11, the United States trustee shall  
15 apply promptly after making the finding to the court for relief." 28 U.S. C. § 586(a)(8).

16 **A. Statement of Facts:**

17 1. The Debtor commenced this case by filing a voluntary petition under chapter 11 on  
18 March 5, 2015, over two years ago. Docket # 1.

19 2. The Debtor's recently filed budget request indicates a diminishing of estate assets with  
20 no reasonable likelihood of rehabilitation. Docket #180.

21 3. The Debtor has not filed the plan status reports quarterly, as required by LR 3016.

22 4. The Debtor has not filed a plan and has not filed a proposed disclosure statement since  
23 June 22, 2015. Docket #72.

24 5. The related adversary proceeding, No. 15-05047, has stalled with no pending hearings  
25 and the last pleading was filed May 26, 2016.  
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1 **B. Application of facts and legal authorities:**

2 1. The Debtor has a substantial or continuing loss to or diminution of the estate and the  
3 absence of a reasonable likelihood of rehabilitation. The Debtor does not generate any non-  
4 exempt income in excess of what is needed to support herself and the estate assets. The Debtor's  
5 Social Security income has properly been claimed as exempt and therefore comes into the  
6 bankruptcy estate and then is exempted back out of the estate to the Debtor. Docket #36, pg. 1;  
7 11 U.S.C. § 522(b); Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1174-76 (9<sup>th</sup>  
8 Cir. 2014). The Social Security proceeds are therefore free for her use in her discretion without  
9 Court approval.  
10

11 However, it has become necessary for the Debtor to consume substantial estate assets, the  
12 water rights sale proceeds, in order to maintain herself and the estate. Docket #180-1. The  
13 property has been listed for sale for two years without success. The Debtor continues to accrue  
14 quarterly fees which diminish the estate's values. Without a sale, of a sufficient amount, the  
15 Debtor has no likelihood of rehabilitation.  
16

17 "The issue of rehabilitation for purposes of § 1112(b)(4)(A) is not the technical  
18 one of whether the debtor can confirm a plan, but, rather, whether the debtor's  
19 business prospects justify continuance of the reorganization effort." In re  
20 Wallace, 2010 Bankr. LEXIS 261, 2010 WL 378351 at \*4 (Bankr. D. Idaho Jan.  
21 26, 2010) (quotations and citations omitted). "Rehabilitation is a different and  
22 much more demanding standard than reorganization." In re Creekside Senior  
Apartments, L.P., 489 B.R. at 61 (citing, In re Brutsche, 476 B.R. 298, 301  
(Bankr. D.N.M. 2012) (citing 7 COLLIER ON BANKRUPTCY at ¶ 1112.04[6][a][ii])).  
In re Hassen Imps. P'ship., 2013 Bankr. Lexis 3870 (9th Cir. BAP 2013) (not for publication).

23 Pursuant to 11 U.S.C. Section 1112(b)(4)(A), a "substantial or continuing loss to or  
24 diminution of the estate and the absence of a reasonable likelihood of rehabilitation," is sufficient  
25 cause for dismissal. Therefore, cause exists for this case to be dismissed.  
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1 2. Failure to file plan status reports, pursuant to LR 3016. Pursuant to 11 U.S.C.  
2 §1112(b)(4)(F), an unexcused failure to file any required report is cause for dismissal of the case.  
3 Pursuant to LR 3016, if a chapter 11 plan has not been filed or approved within six (6) months  
4 after commencement of the case, the Debtor in possession must file a report with the court  
5 explaining why a plan has not been filed or approved and set forth a schedule for filing and  
6 hearing the disclosure statement and plan confirmation. The report shall be updated quarterly.  
7 The Debtor has failed to set a status conference or file any reports pursuant to LR 3016.  
8

9 **CONCLUSION**

10 WHEREFORE, for all the reasons stated above, the US Trustee respectfully requests the  
11 Court dismiss this case, and grant such other relief as the Court deems proper.  
12

13 DATED this 8th day of August, 2017.

14 Respectfully submitted,

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17 William B. Cossitt, State Bar #3484  
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22 /s/ WILLIAM B. COSSITT

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Attorneys for United States Trustee  
Tracy Hope Davis

**CERTIFICATE OF SERVICE**

1. On August 9, 2017 I served the foregoing US TRUSTEE'S MOTION TO DISMISS CASE by the following means to the persons as listed below:

☒ a. ECF System:

- MICHAEL W. CHEN [bknotice@mccarthyholthus.com](mailto:bknotice@mccarthyholthus.com), [mchen@ecf.courtdrive.com](mailto:mchen@ecf.courtdrive.com); [nvbkcourt@mccarthyholthus.com](mailto:nvbkcourt@mccarthyholthus.com); [mchen@mccarthyholthus.com](mailto:mchen@mccarthyholthus.com)
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I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of August, 2017.

/s/ Robbin Little

An employee of the United States Trustee